

Chapter 17.68**AREA OF BENEFIT DISTRICTS**

(3151-8/92, Correction 2/93, 3564-7/02)

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17.68.010 Requirement for Installation of Improvements. As a condition of approval for a Development, a Developer may be required to install and dedicate Public Improvements which may contain supplemental size, capacity, number, or length for the benefit of property not within the Development. When such supplemental size, capacity, number, or length benefits property not within the Development, the City may enter into an agreement setting forth the procedures to reimburse the Developer for the Supplemental Improvements through an Area of Benefit District. In order to reimburse the Developer, the City may: (3151-8/92, 3564-7/02)

- (a) Collect from other persons, including public agencies, a reasonable charge for the use of Supplemental Improvements benefiting real property not within the Development Area. (3564-7/02)
- (b) Contribute to the Developer that part of the cost of the Public Improvements that benefit real property outside the Development Area and levy a charge upon the real property benefited to reimburse the Developer for such cost, together with interest thereon, if any. (3564-7/02)
- (c) Establish and maintain Area of Benefit Districts for the levy and collection of such charge from the property benefited. The charge collected shall be paid to the City or Developer constructing the Public Improvement. (3564-7/02)

17.68.020 Definitions.

- (a) "Actual or Estimated Costs of Public Improvements" means the actual or estimated costs for construction, design engineering, district formation, right-of-way appraisal and acquisition costs, condemnation proceedings, environmental impact mitigation, plan check and permit fees, construction inspections, maintenance of Improvements, or any other expenses attributable to the construction of Public Improvements. If the scope of the Development is altered during construction in order to respond to events or circumstances which are revealed during construction, the City Council may increase the estimated cost by not more than ten (10%) percent without notice to the affected property owners. (3151-8/92, 3564-7/02)

- (b) "Administrative Costs" shall be defined as costs for direct labor and employee benefits, outside consultants, direct materials, indirect costs, overhead costs, and fixed assets or depreciation charges. (3151-8/92, 3564-7/02)
- (c) "Area of Benefit" means the entire area which receives a benefit from the Supplemental Improvements. The "Area of Benefit" shall be that area which, in the opinion of the City Council, upon the recommendation of the City Engineer, and after a noticed public hearing, is determined to be the area benefited by the construction of the Supplemental Improvements. (3151-8/92, 3564-7/02)
- (d) "Benefited Property" is the parcel(s) that is benefited by the Supplemental Improvements and is included within the Area of Benefit. (3564-7/02)
- (e) "Charge" means the Excess Costs attributable to an individual parcel of real property. (3564-7/02)
- (f) "Developer" means the person who is responsible for constructing the Public Improvements. (3151-8/92, 3564-7/02)
- (g) "Development" means any residential, commercial or industrial project or subdivision. (3564-7/02)
- (h) "Development Area" means any residential subdivision or commercial or industrial projects to be constructed by the Developer. (3564-7/02)
- (i) "Excess Costs" means the costs attributable to that portion of Public Improvements which benefit areas outside the Development Area. Benefit may be determined by any commonly accepted method which fairly apportions the cost of the Improvements to the benefiting properties. (3151-8/92, 3564-7/02)
- (j) "Public Improvements" means those improvements as set forth herein including, but not limited to, streets, bridges, traffic signals, street lights, drainage, flood control, water or sanitary sewer facilities, reclaimed water facilities, landscaping, grading, soil remediation, abandonment of oil facilities, relocation of utilities, other public facilities such as parks, libraries, fire stations, police stations, and any accessory improvements necessary for the functioning of the Public Improvements. The term Public Improvements includes not only improvements that benefit the Development, but also those that benefit parcels outside the Development. "Public Improvements" shall also include any property or property interests reasonably necessary for the construction of the improvement. (3151-8/92, 3564-7/02)
- (k) "Substantial Completion of an Improvement" means completion of construction of a Public Improvement to the extent necessary to allow it to be used for the purpose for which it was intended. (3151-8/92, 3564-7/02)
- (l) "Supplemental Improvements" means those Public Improvements which are: (3151-8/92, 3564-7/02)
 - (1) required as a condition of approval of the Development which have a size, capacity, number, or length greater than necessary solely to benefit or mitigate the impacts of the Development; or (3151-8/92, 3564-7/02)
 - (2) improvements which have been agreed upon between the City and Developer. (3151-8/92, 3564-7/02)

17.68.030 Application for Area of Benefit District. Whenever a Developer elects, or is required by the City, to install or replace Supplemental Improvements, or whenever the City participates in the costs of Supplemental Improvements in advance of Development, and provided that the costs of such Supplemental Improvements are not financed by an assessment district or similar proceeding, the Developer may submit an application for formation of an Area of Benefit District, or the City Council, on its own motion, may initiate the formation of the Area of Benefit District. (3564-7/02)

The application of the Developer shall be in writing and shall be submitted to the Office of the City Engineer with a non-refundable application fee. The City Engineer shall expeditiously process the request to City Council. (3151-8/92, 3564-7/02)

17.68.040 Application Fee for Formation of the Area of Benefit District. Where the Developer has applied for formation of an Area of Benefit District, prior to the City Council authorizing the initiation of the formation of the Area of Benefit District, the Developer shall deposit with the City the following fees to cover various administration costs: (3151-8/92, 3564-7/02)

- (a) A non-refundable application fee will be required from the Developer prior to commencing any work on the Area of Benefit District. The amount of the application fee will be determined by the City Engineer. The application fee will be deposited in a general Area of Benefit District administration fund established by the City Treasurer. (3151-8/92, 3564-7/02)
- (b) District formation fees shall be deposited into a specific project fund for each individual project to cover such expenses as the calculation of the Excess Costs of the Supplemental Improvements, determination of the Area of Benefit and determination of the apportionment of the Excess Costs to the benefiting parcels. District formation fees will also include publishing of all notices, mailing, and City administrative costs. Once the fees have been deposited to the City by the Developer, the City Engineer will process the Developer's request to City Council. The City Engineer may retain a qualified consultant to prepare the documents and estimates. This consultant shall have no business relationship with the Developer. The costs of any such engineering services shall be paid by the Developer. The City Council may treat such costs as an incidental cost of the Supplemental Improvements that may be recouped pursuant to the provisions of this Chapter. (3151-8/92, 3564-7/02)

17.68.050 Recovering Costs for Formation and Monitoring the Area of Benefit District. The City Council may levy a supplemental fee on all Benefited Properties paying Area of Benefit charges intended to reimburse the City and Developer for the cost of formation and monitoring the District. (3151-8/92, 3564-7/02)

17.68.060 Report of the City Engineer. Pursuant to the direction of the City Council, the City Engineer shall prepare and file with the City Clerk a report containing the following information: (3151-8/92)

- (a) A map indicating the boundaries of the Area of Benefit District which identifies all parcels within the District. (3151-8/92, 3564-7/02)
- (b) The actual or total estimated cost of the Supplemental Improvements. (3151-8/92, 3564-7/02)
- (c) The proposed spread of the Excess Costs to the Area of Benefit. (3151-8/92, 3564-7/02)

17.68.070 Notice and hearing on establishment of Area of Benefit District. (3151-8/92, correction-2/93: see ordinance 3151, 3564-7/02)

- (a) Upon receiving the request from the City Engineer, the City Clerk shall set a noticed public hearing before the City Council. The City Clerk shall cause a notice of the hearing, in substantially the following form, to be published once in a newspaper of general circulation in the City of Huntington Beach at least ten (10) days prior to such hearing: (3151-8/92)

NOTICE OF HEARING (3151-8/92, 3564-7/02)

The City Council of the City of Huntington Beach will hold a public hearing at ____ on _____ at the City Council Chambers, 2000 Main Street, Huntington Beach, California 92648 to consider the establishment of an Area of Benefit District for the financing of certain public facilities and related improvements within the City.

Your property is located within the proposed boundaries of the Area of Benefit District and may be subject to a charge to pay a portion of the cost of providing public facilities which benefit your parcel of land. If, after the date of forming this District, you either file a final map (subdivision, parcel, consolidation, etc.) or apply for a building permit, the charge and inflation adjustment would become due and payable.

The proposed boundaries of the District are more particularly described by Diagram No _____ which is on file in the Office of the City Clerk. All persons desiring to testify with respect to: the necessity of said Public Improvements, the cost of said Public Improvements, the benefited area and the amount of the costs eligible to be recovered, may appear and be heard at said hearing.

- (b) The City Engineer shall, at least fourteen (14) days prior to the hearing, cause a copy of the above notice to be mailed to each owner of real property within the benefited area as shown on the last equalized tax roll. Such notice shall be accompanied by a diagram of the proposed benefited area and a statement by the City Engineer describing the following:

(3151-8/92, 3564-7/02)

- (1) A description of the Public Improvements and that portion considered to be in excess of the Developer's requirements. (3151-8/92, 3564-7/02)
- (2) The estimated or actual costs necessary to pay for the Public Improvements. (3151-8/92, 3564-7/02)
- (3) The actual or estimated costs of the Supplemental Improvements which are proposed to be charged against the benefiting property when such property is developed or redeveloped. (3151-8/92, 3564-7/02)
- (4) A diagram identifying the properties to be included within the District. (3151-8/92, 3564-7/02)

17.68.080 Action by City Council.

- (a) After the public hearing the City Council may, in its sole discretion, approve a resolution establishing the Area of Benefit District and may enter into a reimbursement agreement with the Developer to provide for the disbursements of the proceeds of the Area of Benefit District. (3151-8/92, 3564-7/02)
- (b) The resolution establishing the Area of Benefit District shall incorporate an exhibit containing the following: (3151-8/92, 3564-7/02)
- (1) A list of the Benefited Properties identified by assessor's parcel numbers. (3151-8/92, 3564-7/02)

- (2) A diagram identifying the parcels included within the District. (3151-8/92, 3564-7/02)
 - (3) An apportionment of the Excess Costs which represent the actual or estimated amount to be charged against each Benefited Property within the District. If the Costs are estimated, the resolution will indicate that the Charges are subject to re-computation by the City Engineer when the construction and final audit have been completed. (3151-8/92, 3564-7/02)
 - (4) The time when such Charges are due and payable. (3151-8/92, 3564-7/02)
 - (5) A statement indicating that the Charges are subject to an interest or inflation charge, the terms of which shall be defined. (3151-8/92, 3564-7/02)
- (c) Once the Area of Benefit District has been approved by a resolution of the City Council, it shall establish a statement of charges due from the benefiting properties and their successors, heirs and assigns. (3151-8/92, 3564-7/02)
- (d) Unless directed otherwise by the City Council at the time of the District formation, the City Clerk shall record a certified copy of the Resolution establishing the District with the County Recorder. (3564-7/02)

17.68.090 Re-computation of Charge. If the District is formed based on estimated costs, then the City Engineer shall reapportion the charge amounts after final costs have been calculated and verified by the City Engineer or his designee. All affected property owners shall be notified in writing of their charge amount. (3151-8/92, 3564-7/02)

17.68.100 Administrative Audit. The Finance officer shall prepare a report indicating the administrative costs incurred for each District on an annual basis. The report shall be prepared each calendar year following the formation of a Area of Benefit District and shall be completed by February 15. (3151-8/92, 3564-7/02)

17.68.110 Establishment of Area of Benefit Charge.

- (a) Payment of Charges shall be placed by the City in the appropriate fund account established by Council for each District. These funds will be established to reimburse the Developer for costs incurred for the construction of the Supplemental Improvements. All accrued interest in this fund will be transferred to the project monitoring fund. The term of any reimbursement agreement shall be established by the City Council based upon the reasonable expectations of the Development of benefited properties or the utilization of the Public Improvement by such benefited properties provided. (3151-8/92, 3564-7/02)
- (b) Following the formation of the District, if any person records a final map (subdivision, parcel, consolidation, etc.) or applies for a building permit on a parcel within a District in accordance with this Chapter, and such person or their predecessor in interest has not paid such charge to the City, the established charge shall be paid prior to the recording of the final tract map, final parcel map or the issuance of the building permit. (3151-8/92, 3564-7/02)
- (c) All charges shall include a principal charge plus an interest or inflation charge calculated from the date of establishment of the District. The date of establishment shall be the date of acceptance of the Public Improvements by the City, or City Council approval of the District, whichever occurs later. (3151-8/92, 3564-7/02)
- (d) Once a charge has been paid, the City Engineer shall cause a notice to be recorded with the County Recorder removing the parcel from the Area of Benefit District. (3564-7/02)

17.68.115 Exemption from Charge.

- (a) No Charge shall be required in connection with building permits described below: (3564-7/02)
- (1) Building alterations for non-residential uses which do not exceed a third (1/3) of the value of a building, as defined in the Uniform Building Code, and which effect no change in occupancy, and where no additional vehicle trips will be produced over and above those produced by the existing building. (3564-7/02)
 - (2) Building alterations or additions for residential use which add no residential units. (3564-7/02)
 - (3) Fences and walls. (3564-7/02)
 - (4) Repair of construction defects or damage due to fire, civil unrest, flood or any other destructive act of nature which does not increase the building area by more than one third (1/3) the original area, provided that no additional vehicle trips will be produced over and above those produced by the original use of the land. (3564-7/02)
 - (5) Temporary uses as specified in the City of Huntington Beach's Ordinance Code, Article 973. (3564-7/02)
- (b) Any claim of exemption must be filed with the City Engineer. Such application shall be filed with the City Engineer at the time of application for a building permit or final map. Each application shall state in detail the factual basis for the requested charge exemption. (3564-7/02)

17.68.117 Adjustment of Charge. The City Council may create, pursuant to the resolution establishing an Area of Benefit District, a procedure for adjusting the Charge to Benefited Parcels. The procedure shall address the circumstance that the Supplemental Improvements will not benefit individual properties within the Area of Benefit due to the nature of development proposed on the property. (3564-7/02)

17.68.120 Obligation of Developer to Claim Monies. All monies collected under the provisions of this Chapter shall be deposited by the City Treasurer into the appropriate fund established for the collection of funds and the monitoring of the district. The City Treasurer shall pay annually all monies so collected to the Developer who paid for the Supplemental Improvements for which the charges were collected, or to their assignees. The City shall notify the Developer of the existence of monies deposited in said fund. No funds will be reimbursed to the Developer until all costs included in the District have been verified by the City Engineer. The notice shall be mailed to the address contained in the reimbursement agreement and no further inquiries shall be required by the City. If any such money remains on deposit with the City without being claimed by the party rightfully entitled to it within three (3) years after notice has been made as provided herein, such money shall be forfeited to the City and then it shall be transferred to the general fund of the City. (3151-8/92, 3564-7/02)

17.68.130 Delegation of Duties. Whenever a duty is delegated or reposed in a City official or employee, except the City Council, that official or employee may delegate all or a portion of these duties to an assistant, deputy, or other employee of the City. (3151-8/92, 3564-7/02)

17.68.140 Challenges to District. Any action or proceeding to challenge, attack, set aside, avoid, or review the decision of the City Council to establish an Area of Benefit District or a reimbursement charge, fee, or requirement, or to decline to establish a District shall be brought by an interested person within ninety (90) days of formation of the District. (3151-8/92, 3564-7/02)